



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 63

[EPA-HQ-OAR-2009-0234 and EPA-HQ-OAR-2011-0044; FRL-9926-74-OAR]

RIN 2060-AR62

Reconsideration on the Mercury and Air Toxics Standards (MATS) and the Utility New Source Performance Standards; Final Action

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final action denying petitions for reconsideration.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is providing notice that it has responded to 23 petitions for reconsideration of the final rules titled National Emission Standards for Hazardous Air Pollutants (NESHAP) From Coal- and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance (NSPS) for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units, published in the **Federal Register** on February 16, 2012. The agency previously granted reconsideration on several discrete issues and took final action on reconsideration through documents published in the **Federal Register** on April 24, 2013, and November 19, 2014. The Administrator denied the remaining requests for

reconsideration in separate letters to the petitioners dated April 21, 2015. A document providing a full explanation of the agency's rationale for each denial is in the docket for these rules.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Mr. Jim Eddinger, Sector Policies and Programs Division (D243-01), Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-5426; fax number: (919) 541-5450; email address: eddinger.jim@epa.gov.

SUPPLEMENTARY INFORMATION:

I. How Can I Get Copies of This Document and Other Related Information?

This **Federal Register** document, the petitions for reconsideration, the letters denying the petitions for reconsideration, and the document titled "Denial of Petitions for Reconsideration of Certain Issues: MATS and Utility NSPS" (Reconsideration Response Document) are available in the dockets the EPA established under Docket ID No. EPA-HQ-OAR-2009-0234 and Docket ID No. EPA-HQ-OAR-2011-0044. The Reconsideration Response Document is available in both the MATS and Utility NSPS dockets by conducting a search of the title "Denial of Petitions for

Reconsideration of Certain Issues: MATS and Utility NSPS." All documents in the dockets are listed on the www.regulations.gov Web site. Although listed in the index, some information is not publicly available, e.g., confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the EPA Docket Center (EPA/DC), Room 3334, EPA WJC West Building, 1301 Constitution Ave., NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744 and the telephone number for the Air Docket is (202) 566-1742. This **Federal Register** document and the Reconsideration Response Document denying the petitions can also be found on the EPA's Web site at <http://www.epa.gov/ttn/atw/utility/utilitypg.html>.

II. Judicial Review

Section 307(b)(1) of the Clean Air Act (CAA) indicates which Federal Courts of Appeals have venue for petitions for review of final EPA actions. This section provides, in part, that the petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit if: (i) The agency

action consists of "nationally applicable regulations promulgated, or final action taken, by the Administrator," or (ii) such actions are locally or regionally applicable, if "such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator find and publishes that such action is based on such a determination."

The EPA has determined that its actions denying the petitions for reconsideration are of nationwide scope and effect for purposes of section 307(d)(1) because the actions directly affect the "National Emission Standards for Hazardous Air Pollutants (NESHAP) From Coal- and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance (NSPS) for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units," both of which were found to be of nationwide scope and effect. Thus, any petitions for review of the EPA's decisions denying petitioners' requests for reconsideration must be filed in the United States Court of Appeals for the District of Columbia Circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

III. Description of Action

On February 16, 2012, pursuant to sections 111 and 112 of the CAA, the EPA published the final rules titled "National Emission Standards for Hazardous Air Pollutants from Coal- and

Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units" (77 FR 9304). The NESHAP rule issued pursuant to CAA section 112 is referred to as the Mercury and Air Toxics Standards (MATS), and the NSPS rule issued pursuant to CAA section 111 is referred to as the Utility NSPS. Following promulgation of the final rules, the Administrator received petitions for reconsideration of numerous provisions of both MATS and the Utility NSPS pursuant to CAA section 307(d) (7) (B).

The EPA received 20 petitions for reconsideration of the MATS rule and 3 petitions for reconsideration of the Utility NSPS. The EPA received petitions for reconsideration of the MATS rule from the following organizations: American Public Power Association, ARIPPA, Babcock & Wilcox, Basin Electric Power Cooperative, Climate Policy Group, Coal Utilization Research Council, Earthjustice, East Kentucky Power Cooperative, Edgecombe/Spruance Genco, Edison Mission Energy, FirstEnergy, Hawaiian Electric Company, Institute of Clean Air Companies, International Brotherhood of Boilermakers, Power4Georgians, Puerto Rico Electric Power Authority, Southern Company, State of Texas (Texas Commission on Environmental Quality, Texas Public Utility Commission, Railroad Commission of Texas), Utility Air

Regulatory Group (UARG), and Wolverine Power Supply Cooperative. The EPA received petitions for reconsideration of the Utility NSPS from the following organizations: Air Products, State of Texas (Texas Commission on Environmental Quality, Texas Public Utility Commission, Railroad Commission of Texas), and UARG.

CAA section 307(d)(7)(B) states that "[o]nly an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review. If the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within such time or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule, the Administrator shall convene a proceeding for reconsideration of the rule and provide the same procedural rights as would have been afforded had the information been available at the time the rule was proposed. If the Administrator refuses to convene such a proceeding, such person may seek review of such refusal in the United States court of appeals for the appropriate circuit (as provided in subsection (b))." Thus, the EPA is only required to grant a CAA section 307(d)(7)(B) petition for reconsideration if the petitioner demonstrates both: (1) That it was impractical to

raise the objection during the public comment period, or that the grounds for such objection arose after the public comment period but within the time specified for judicial review (i.e., within 60 days after publication of the final rulemaking in the **Federal Register**); and (2) that the objection is of central relevance to the outcome of the rule.

On November 30, 2012, the EPA issued a proposed rule reconsidering certain new source MATS, the requirements applicable during periods of startup and shutdown for MATS and the Utility NSPS (for the PM standard only), certain definitional and monitoring issues in the Utility NSPS, and additional technical corrections to both MATS and the Utility NSPS (77 FR 71323). On April 24, 2013, the EPA issued the final action on reconsideration of the new source MATS, the definitional and monitoring provisions in the Utility NSPS, and the technical corrections in both rules (78 FR 24073). The EPA issued the final action on reconsideration of the startup and shutdown provisions in the MATS and Utility NSPS on November 19, 2014 (79 FR 68777). In addition, on February 17, 2015, the EPA proposed additional technical corrections to the final MATS rule and the Utility NSPS (80 FR 8442). These actions addressed many issues raised in the petitions for reconsideration of the final MATS rule and the Utility NSPS.

On April 21, 2015, the Administrator, Gina McCarthy, signed letters to petitioners denying the remaining issues in the petitions for reconsideration. The EPA carefully reviewed the petitions and evaluated each issue raised in the petitions for reconsideration to determine if they meet the CAA section 307(d)(7)(B) criteria for reconsideration. The EPA denied the remaining issues in the petitions for reconsideration because they do not meet the criteria for reconsideration and/or are moot as explained in detail in the Reconsideration Response Document. That document articulates in detail the rationale for the EPA's final response to each of the remaining issues in the petitions for reconsideration received on the final MATS rule and the Utility NSPS.

As explained in the Reconsideration Response Document, a significant majority of the issues raised in the petitions for reconsideration were or could have been raised in comments on the proposed MATS and Utility NSPS. In addition, many of the parties that filed petitions for reconsideration of the final MATS and Utility NSPS also filed petitions for review of the final rules in the United States Court of Appeals for the District of Columbia Circuit (Court or D.C. Circuit). Many of the issues raised in the petitions for reconsideration were also

raised in the D.C. Circuit litigation, and other reconsideration issues could have been raised in that litigation. On April 15, 2014, the Court denied all petitions for review of MATS and the

Utility NSPS. *White Stallion Energy Center v. EPA*, 784 F.3d 1222 (D.C. Cir. 2014); cert. granted, *State of Michigan v. EPA*, No. 14-46 (and consolidated cases). As the Court may only consider issues raised during the period for public comment, issues raised in the litigation and addressed by the Court clearly do not meet the criteria for reconsideration in CAA section 307(d) (7) (B). Moreover, parties may not use this final action denying reconsideration as a basis to litigate issues that could have been raised in the initial litigation.

Dated: April 21, 2015.

Gina McCarthy,
Administrator.

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